

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

AFFIDAVIT

- against -

Indictment No. 07 Crim. 732

OSCAR LEMUS,

Defendant.

=====X

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

OSCAR LEMUS, being duly sworn, deposes and says:

1. Your deponent is the defendant herein and is fully familiar with all the facts and circumstances heretofore had herein. I make this affidavit in support of my application for certain omnibus relief.

2. On June 12, 2007, at or about 10:00 a.m., I was working in the Town of Stony Point, County of Rockland and State of New York. At that time, I received a telephone call on my cell phone from an individual representing himself to be a representative of the gas company and advising me that I had to immediately return to my home since there was a gas leak. I advised this individual that there were other people at my home and I would not leave work.

3. Shortly thereafter, I received a second telephone call from this individual who then identified himself as an agent with the Immigration & Naturalization Services. I was advised by this agent that I had to return to my home immediately. When I advised the agent that I could not leave work and did not have to cooperate since my immigration status was legal, he advised that if I did not immediately give my location to the agent, that within five minutes

my legal status would be revoked and I would be illegal. Under this threat, I advised the agent as to my location.

4. At or about 10:30 a.m., this agent appeared at my workplace in the Town of Stony Point, County of Rockland and State of New York. At that time, I was told to move away from my co-workers towards the agent's car. My wallet and cell phone were seized from me without my consent and I was physically pushed into the back of the agent's car by the agent against my will. I was transported by the agent to the Stony Point Police Department where I was kept for approximately five to six hours. I was never shown an arrest or search warrant.

5. I was questioned for a substantial period of time at the Stony Point Police Department. I objected to the fact that the questions were in English and demanded a Spanish interpreter. A Spanish interpreter arrived at approximately 12:30 p.m.

6. After a lengthy time of questioning, the questioning ceased and I was put into a jail cell. At approximately 3:30 p.m., while I was in the jail cell, I was finally given my ***Miranda*** warnings. This was after all the questioning in Stony Point was terminated and was the first time I was given these warnings.

7. At approximately 3:45 p.m., I was transported from Stony Point to Spring Valley. I arrived at Spring Valley at approximately 4:00 p.m., at which time I was photographed, fingerprinted, and booked.

8. At approximately 4:45 p.m., I was put in a cell in Spring Valley.

9. It was not until approximately 6:00 or 7:00 p.m. that I was once again questioned in Spring Valley. This was the first time I was questioned after ***Miranda*** warnings had been given.

10. At approximately 4:00 p.m. while I was in Spring Valley, I was finally permitted to telephone a friend and I requested my friend to obtain a lawyer for me. As a result of this telephone call, an attorney, Robert Conklin, Esq., did in fact call the Spring Valley Police Station but was not permitted to speak with me, nor I with him.

11. It was not until after 10:00 p.m., almost twelve hours after my arrest, that we finally left the Spring Valley Police Department. I arrived at the Federal Courthouse at approximately 11:00 p.m.

12. Any statements I might have made I made after my arrest and were made before I was given my *Miranda* warnings or at a point in time well in excess of six hours after my arrest.

WHEREFORE, your deponent respectfully requests an Order of this Court suppressing any statements allegedly made, together with such other and further relief as this Court may deem just, proper and equitable.

OSCAR LEMUS

Sworn to before me this
5th day of December, 2007

Notary Public